

No. 16732

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL HOD CARRIERS', BUILD-
ING AND COMMON LABORERS' UNION
OF AMERICA, LOCAL 300, AFL-CIO,
Respondent.

Transcript of Record

Petition for Enforcement and Petition for Review of Order
of the National Labor Relations Board

FILED

MAY 22 1960

FRANK H. SCHMID, CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer to Complaint (G.C. Ex. 1-F).....	9
Answer to Petition For Enforcement of an Order of the National Labor Relations Board and Requesting Review, etc.....	36
Certificate of the National Labor Relations Board	31
Charge (G.C. Ex. 1-A).....	3
Complaint and Notice of Hearing (G.C. Ex. 1-D)	5
Decision and Order.....	27
Intermediate Report and Recommended Order	12
Conclusions of Law.....	22
Findings of Fact.....	13
Recommendations	23
Names and Addresses of Attorneys.....	1
Petition For Enforcement of an Order of the National Labor Relations Board.....	33
Statement of Points Relied Upon by the Board	39

Transcript of Proceedings and Testimony (Partial)	40
Exhibits For the General Counsel:	
1-A—Charge	3
1-D—Complaint and Notice of Hearing...	5
1-F—Answer to Complaint.....	9
Exhibit For Respondent:	
1—Articles of Agreement Dated July 18, 1946	66
Witnesses For the General Counsel:	
Colhoun, William	
—direct	41
Eiden, Jack	
—direct	43
Garcio, Monico C.	
—direct	44
—cross	51
Martin, William L.	
—direct	53
—cross	54
—redirect	57
Sherman, Arthur F.	
—direct	58
—cross	61
Witness For Hod Carriers:	
D'Amico, Joseph	
—direct	62

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Attorney for Respondent.

GENERAL COUNSEL'S EXHIBIT No. 1-A

United States of America
National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS

* * * * *

Case No. 21-CB-1077. Date filed: 4-24-58.

1. Labor Organization or Its Agents Against
Which Charge Is Brought:

Name: Laborers Local Union 300, AFL-CIO.

Address: 2005 West Pico Boulevard, Los Angeles
6, California.

The above-named organization or its agents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b) Subsections (1)(A) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the charge:

The above-named Labor Organization, acting through its officers, agents, and employees, caused Martin Bros. to discharge the undersigned employees on April 21, 1958, because they were not cleared to work for the Employer by said Labor Organization.

By these and other acts, said Labor Organization has restrained and coerced the employees of Mar-

General Counsel's Exhibit No. 1-A—(Continued)
tin Bros. in their rights guaranteed in Section 7 of
the Act.

3. Name of Employer: Martin Bros.

4. Location of plant involved: 6206 South Wilton
Place, Los Angeles, California.

5. Type of establishment: Construction Contractor.

6. Identify principal product or service: Plastering and Lathing.

7. Number of workers employed: 15.

8. Full name of party filing charge: 1. Monico
C. Garcia. 2. Jesse Gallego.

9. Address of party filing charge (Street, City,
and State): 1. 2326 Riverside Drive, Los Angeles,
California. 2. 6721 $\frac{1}{4}$ La Mar, Los Angeles, Cali-
fornia.

10. Telephone Number: 1. NO 2-4080. 2. CA
5-1837.

11. Declaration:

I declare that I have read the above charge and
that the statements therein are true to the best of
my knowledge and belief.

/s/ MONICO C. GARCIA

/s/ By JESSE GALLEG0

1. Monico C. Garcia

2. Jesse Gallego

Individuals

April 24, 1958.

Admitted in Evidence December 3, 1958.

GENERAL COUNSEL'S EXHIBIT No. 1-D

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. 21-CB-1077

INTERNATIONAL HOD CARRIERS', BUILD-
ING AND COMMON LABORERS' UNION
OF AMERICA, LOCAL #300, AFL-CIO,

and

MONICO C. GARCIA AND JESSE GALLEGU,
INDIVIDUALS.

COMPLAINT AND NOTICE OF HEARING

It having been charged by Monico C. Garcia and Jesse Gallego that International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO, herein called the Respondent, has been engaging in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act; the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10 (b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 7:

General Counsel's Exhibit No. 1-D—(Continued)

1. The charge was filed by Monico C. Garcia and Jesse Gallego on April 24, 1958, and was served upon the Respondent on April 25, 1958.

2. The Contracting Plasterers' Association of Southern California, Inc., herein called the Association, is an association of contractors in Southern California engaged in lathing and plastering work. Through designated representatives it participates in the negotiation and execution of collective bargaining agreements with various labor organizations, including the Respondent, on behalf of its members, including Martin Bros., more fully described in paragraph 3 below.

3. Martin Bros. is a partnership engaged in the lathing and plastering contracting business and is a member of the Association.

4. Members of the Association located in Southern California, during the 12-month period ending June 30, 1958, have shipped products and furnished services valued in excess of \$50,000 to points outside the State of California.

5. The Association and its members, including Martin Bros., are engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

6. The Respondent is a labor organization within the meaning of Section 2, subsection (5) of the Act.

7. The Respondent, by its representative, Dan Gomez, attempted to cause and did cause Martin Bros. to discharge Monico C. Garcia and Jesse

General Counsel's Exhibit No. 1-D—(Continued)

Gallego, on or about April 21, 1958, for reasons other than their failure to tender initiation fees and periodic dues uniformly required as a condition of acquiring or retaining membership.

8. By the acts and conduct set forth in paragraph 7 above, the Respondent has caused and is causing an employer to discriminate against employees in violation of Section 8 (a) (3) of the Act, and the Respondent thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b), subsection (2) of the Act.

9. By the acts and conduct set forth in paragraph 7 above, the Respondent has restrained and coerced and is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b), subsection (1) (A) of the Act.

10. The acts and conduct of the Respondent, as set forth in paragraphs 7, 8 and 9, occurring in connection with the operations of Martin Bros. and the Association, as described in paragraphs 2, 3 and 4 hereof, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce as defined in Section 2, subsection (7) of the Act.

General Counsel's Exhibit No. 1-D—(Continued)

11. The acts and conduct of the Respondent, as set forth in paragraphs 7, 8 and 9 above, constitute unfair labor practices affecting commerce within the meaning of Section 2, subsections (6) and (7), and Section 8 (b), subsections (1) (A) and (2) of the Act.

Please Take Notice that on the 12th day of November 1958, at 10:00 a.m., PST, in Hearing Room 1, on the Mezzanine Floor, 849 South Broadway, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the undersigned Regional Director, this 21st day of

General Counsel's Exhibit No. 1-D—(Continued)
October 1958, issues this Complaint and Notice of
Hearing against Respondent herein.

[Seal] /s/ RALPH E. KENNEDY,
Regional Director, National Labor Relations Board,
Twenty-First Region.

Admitted in Evidence December 3, 1958.

GENERAL COUNSEL'S EXHIBIT No. 1-F

[Title of Board and Cause.]

ANSWER TO COMPLAINT

Respondent in the above matter, through its counsel, Alexander H. Schullman, in answer to the complaint on file herein, admits, denies and alleges as follows:

1. Having no information or belief with respect to paragraph 1 of said complaint, respondent denies each and all of the allegations contained therein.

2. In answer to paragraph 4 of said complaint, having no information or belief with respect thereto, respondent denies each and all of the allegations contained therein.

3. In answer to paragraph 5 of said complaint, respondent denies that Martin Brothers is engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

General Counsel's Exhibit No. 1-F—(Continued)

4. In answer to paragraph 7 of said complaint, respondent denies each and all of the allegations contained therein.

5. In answer to paragraph 8 of said complaint, respondent denies each and all of the allegations contained therein, and denies that it has caused an employer to discriminate against employees in violation of Section 8 (a) (3) of the Act, and further denies that respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (b), subsection (2) of the Act.

6. In answer to paragraph 9 of said complaint, respondent denies each and all of the allegations contained therein and further denies that respondent has restrained and coerced or is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and further denies that it has engaged in or is engaging in unfair labor practices under Section 8 (b), subsection (1) (A) of the Act.

7. Answering paragraph 10 of said complaint, respondent denies each and all of the allegations contained therein and further denies that any of the alleged acts or conduct of respondent have in any way a close, intimate and substantial relation to commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce as defined in Section 2, subsection (7) of the Act.

General Counsel's Exhibit No. 1-F—(Continued)

8. Answering paragraph 11 of said complaint, respondent denies all of the allegations contained therein and denies that the alleged acts and conduct of the respondent, as set forth in paragraphs 7, 8 and 9 of the complaint, constitute unfair labor practices affecting commerce within the meaning of Section 2, subsections (6) and (7), and Section 8 (b), subsections (1) (A) and (2) of the Act.

9. For an affirmative response, respondent alleges as follows:

(a) That Martin Brothers are presently and have been for some time under contract with respondent, and that employment pursuant to said contract and the procedures thereto have not been complied with, so that the employment by Martin Brothers of the charging parties has constituted unfair labor practice against respondent, its members and non-members who have appeared on the open and non-discriminatory hiring hall lists maintained by respondent pursuant to its collective bargaining agreement with Martin Brothers.

(b) That the National Labor Relations Board does not have jurisdiction of the matters complained of, since each and all of such matters constitute matters that are intrastate and do not affect or burden commerce.

(c) That respondent having been deprived and denied, historically and legally, the rights and benefits of the remedial provisions of the Labor Management Relations Act, 1947, as amended, may not

General Counsel's Exhibit No. 1-F—(Continued)
be subject to or have invoked against it any of the
sanctions or penalties provided for in said Act.

Wherefore, in behalf of the respondent, counsel
for said respondent respectfully requests that the
complaint be dismissed against respondent.

/s/ ALEXANDER H. SCHULLMAN
Alexander H. Schullman
Attorney for Respondent

Admitted in Evidence December 3, 1958.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND
RECOMMENDED ORDER

Statement of the Case

This complaint alleges that Respondent, International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO, caused Martin Bros., an employer, to discharge Monico C. Garcia and Jesse Gallego on or about April 21, 1958, for reasons other than their failure to tender initiation fees and periodic dues, thereby engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act. Respondent's answer denied the commission of any unfair labor practices; denied that commerce was affected herein; and alleged that Martin Bros. had

not complied with its contractual arrangement with Respondent providing for a hiring hall.

Pursuant to notice, a hearing was held before the undersigned Trial Examiner at Los Angeles, California, on December 3, 4, and 18, 1958. The parties were represented by counsel who were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce relevant evidence. The General Counsel and Respondent presented oral argument and a time was set for filing briefs; no briefs were received within the set period.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of Fact

I. The business of the Employer

Martin Bros., a partnership engaged in lathing and plastering contracting in the Los Angeles area, is a member of the Contracting Plasterers' Association of Southern California, Inc., whose members consist of 326 lathing and plastering contractors in Orange and Los Angeles Counties, California. The latter bargains for and signs association-wide collective bargaining agreements in behalf of all its members with various labor organizations including Respondent. During the year ending June 30, 1958, one member of the Association, A. E. Eiden and Sons, of Los Angeles, performed work valued between \$600,000 and \$750,000 at the Air Force

Academy in Colorado Springs, Colorado; the total price of this contract was \$1,586,000.¹

I find that the operations of Martin Bros. affect commerce and that it would effectuate the purposes of the Act to assert jurisdiction herein. Siemons Mailing Service, 122 NLRB No. 13; Local 27, ITU (Heiter-Starke Printing Co.) 121 NLRB No. 131; and Insulation Contractors of Southern California, 110 NLRB 638. See also *N. L. R. B. v. Gottfried Baking Co.*, 210 F. 2d 772 (C.A. 2); *N. L. R. B. v. Drummond Implement Co.*, 210 F. 2d 828 (C.A. 6); and *N. L. R. B. v. Weyerhaeuser Timber Company*, 132 F. 2d 234 (C.A. 9).

II. The labor organization involved

International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO, is a labor organization admitting to membership the employees of the employer.

III. The unfair labor practices

A. The issue; sequence of events

The sole issue herein is whether Respondent Union caused the discharge by the employer of two employees, Monico C. Garcia and Jesse Gallego, on Monday, April 21, 1958, for a reason not permitted under the Act. The facts in great part are not in dispute.

¹The transcript erroneously omitted a cipher in the last figure. It is further noted that the transcript erroneously refers to Garcia as Garcio.

The employer has been engaged for some time on a construction project known as the Wilshire Terrace job. The two complainants, of their own volition, went to the project on Friday, April 18; solicited employment from Foreman Arthur Sherman; and were hired as laborers. Both were members in good standing of Respondent at the time material herein and Garcia had been a member for 16 months. No issue has been raised with respect to their good standing.

The two men also reported for work on the next workday, Monday, April 21, but were not permitted to commence work. Assistant Business Agent Gomez of Respondent was on the scene; ascertained that the men had found this employment themselves without a union clearance; and then spoke with Foreman Sherman in the presence of the two complainants. According to Sherman, Gomez announced that "these men have to get off the job because they have no clearance for the job." Sherman immediately instructed the two men to report to the local hiring hall "and get a clearance and come back." According to Garcia, Sherman told them to "go get it straight with the union."

Obtaining a clearance was not a simple matter, however. The two men left the job, reported to the union hall and were referred to Acting Field Manager Joseph D'Amico who was not in. They waited for his return at approximately 2 p.m. and at that time D'Amico refused to give them a clearance. The two men protested that they had jobs waiting for

them and needed the clearance, but D'Amico replied that they had to list their numbers on the referral board and wait for their turn. The two men also approached Dispatcher Dan Harvey but were met with the same response; indeed Harvey pointed out that he had sent two other men to the job.

About 7 weeks later, the two men did go back to work at the Wilshire Terrace job, apparently pursuant to the dispatch system, and Garcia is currently employed there. During the interim, they attempted twice on their own to obtain reinstatement, but were refused work by Foreman Sherman because they did not have a clearance. It is to be noted that Garcia reported to the hall each morning during this period and listed his name, but was not dispatched to any jobs.

B. Conclusions

A recitation of the facts readily discloses that there is an undisputed violation of the Act unless Respondent's defenses have merit. Contrary to Respondent's contention, direct action was taken against specific individuals by Respondent and this constitutes causation within the meaning of Section 8 (b) (2) of the Act. *Westwood Plumbers*, 122 NLRB No. 91.

As for the merits, Board decisions recognize two avenues of approach by way of defense. Firstly, if there is a valid union shop, discharges only for failure to pay periodic dues or initiation fees are recognized under the authority of *N. L. R. B. vs.*

Radio Officers Union, 347 U.S. 17. Respondent's defense does not appear to be directed to this; if it were, it would fail for this case involves the imposition of a greater degree of union security than the Act permits.

Secondly, and more currently, the Board will recognize an exclusive hiring hall agreement between employer and a union, usually in a situation where the contract has no union shop clause, where three specific safeguards against discrimination are set up, as provided in Mountain Pacific Chapter of the AGC, 119 NLRB No. 126-A. See, e.g., Local Union No. 450, International Union of Operating Engineers, AFL-CIO (Tellepsen), 122 NLRB No. 78, and E&B Brewing Company, Inc., 122 NLRB No. 50. Perhaps still a third avenue of approach appears to be one where, despite the existence of a hiring hall and the absence of a union shop contract, the union refuses to dispatch for reasons that the Board has found to be unrelated to union activities. Longshoremen's Local No. 10, 121 NLRB No. 60.

Respondent's contention in this case is apparently bottomed upon the second of the foregoing categories. It claims that Respondent and the employer, Martin Bros., are subject to a hiring hall clearance system. The facts do not bear this out. Initially, it is clear, as Partner William Martin testified, that Martin Bros. uses both plaster tenders and laborers; that Martin Bros., through its membership in the Contracting Plasters' Association, is party to a contract with Respondent; and that this

contract applies to plaster tenders only. This contractual relationship is of long standing and involves the dispatch of plaster tenders through Respondent's hiring hall.

However Respondent contends that a similar arrangement also covers the employment of laborers by Martin Bros. It relies on the following facts. In 1946 when W. L. Martin was in business for himself he did some general contracting work involving the use of various basic crafts and he thus found it necessary to obtain a general contractor's license. Although never a member of the Associated General Contractors, he signed a so-called short form agreement in June of 1946 with the Los Angeles Building and Construction Trades Council.

Therein he agreed on a one-page document, inter alia, (1) to employ "only members in good standing" of the respective labor organizations belonging to the Building Trades Council and (2) to contact the Building Trades Council before starting jobs and complying with its requirements for "clearing workmen to the job." The agreement is silent concerning wages, hours, and other basic working conditions. It is Respondent's theory that this agreement which ran for one year and from year to year thereafter has kept renewing itself; is currently in effect; and that as a result, Martin Bros., which was first formed in 1948, it may be noted, is bound by existing contracts in the Los Angeles area between various employer groups and the District Council of Laborers, which presumably includes Respondent Union.

Respondent's contention in this respect comes as a surprise to the Contracting Plasterers' Association, the bargaining representative of Martin Bros. For its executive secretary, William Colhoun, testified that it bargains in behalf of its 326 members with Respondent, that it has but one contract with Respondent, and that this, as noted, applies only to hod carriers [plaster tenders]. Specifically, he testified that the Association and its members have no agreement with Respondent for laborers.

Respondent points to the admitted fact that Martin Bros. does hire laborers through Respondent's hiring hall and further that it makes contributions to the health and welfare fund for both plaster tenders and laborers; these are separate funds under separate trusteeship. That is, the labor contracts in the Los Angeles area call for contributions of so much per hour worked to health and welfare funds for both plaster tenders and laborers, and Martin Bros. makes these contributions; the contributions to the laborers fund have been made since 1955.

On the other hand, this conduct by Martin Bros. is equally consistent with an employer acting in a manner consistent with the realities of industrial life. The Union wage scale in the area apparently called for so much per hour plus fringe benefits and partner William Martin testified that he pays laborers' wages as set forth in the current A.G.C. contract in the area. In order to obtain union employees through the Union he presumably paid the scale and fringe benefits prevailing in this large

metropolitan area. And the record discloses that Martin Bros. has hired directly on the job in a number of cases as well as through the Union.

To sum up, a preponderance of the evidence supports the claim of the General Counsel that there was no contract or contractual arrangement between Martin Bros. and Respondent Union covering the dispatch of laborers. The only evidence of a contract, aside from the contributions to the health and welfare fund, is a one-page short form document signed in 1946 by the predecessor of Martin Bros., whereby the predecessor agreed to maintain an illegal closed shop in his dealings with the six basic trades which were members of the Building Trades Council.

Obviously, this one page document which sets forth no wages, rates of pay, hours of employment, or customary terms and conditions of employment does not rise to the stature of a collective bargaining agreement, particularly so 12 years after its signature by a different employer. *Merritt-Chapman & Scott*, 118 NLRB 380, 382. Furthermore it goes beyond the limited union shop permitted under the *Radio Officers* decision, *supra*. And considering it under the Board's *Mountain Pacific* doctrine, *supra*, that the hiring hall is *sui generis* and to be evaluated under its own criteria, the record does not disclose that Respondent has met the three requisites of the *Mountain Pacific* decision. See *Consolidated Western Steel*, 122 NLRB No. 107.

In view of all the foregoing considerations, I find that Respondent caused the discharge, on April 21,

1958, of Monico Garcia and Jesse Gallego; that by such conduct, Respondent has engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act, and further that Respondent has thereby restrained and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, within the meaning of Section 8 (b) (1) (A) thereof.

IV. The effect of the unfair labor practices upon commerce

The activities of Respondent, set forth in Section III above, occurring in connection with the operations of the employer, described in Section I above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent caused Martin Bros. to discriminate against Monico C. Garcia and Jesse Gallego. Although the record discloses that Garcia has returned to work for the Employer, it does not reveal whether Gallego has. It will be recommended therefore that Respondent notify the

Employer, in writing, and furnish copies thereof to Garcia and Gallego, that it withdraws its objections to their employment and requests the Employer to offer Gallego reinstatement. It will further be recommended that Respondent make them whole for any loss of pay suffered by reason of the discrimination against them. Said loss of pay, based upon earnings which they would normally have earned from the date of the discrimination against them, April 21, 1958 to the date of reinstatement or offer thereof, as the case may be, less net earnings, shall be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. See *N. L. R. B. v. Seven-Up Bottling Co.*, 344 U.S. 344.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

Conclusions of Law

1. Martin Bros. is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
3. By causing an employer to discriminate against Monico C. Garcia and Jesse Gallego in violation of Section 8 (a) (3) of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

4. By the foregoing conduct, Respondent has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, I recommend that Respondent, International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO, its officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Martin Bros. or any employer whose operations affect commerce, to discriminate against employees in violation of Section 8 (a) (3) of the Act;

(b) Restraining or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Make whole Monico C. Garcia and Jesse Gallego for any loss of pay they may have suf-

ferred by reason of the discrimination against them in the manner set forth hereinabove.

(b) Notify Monico C. Garcia, Jesse Gallego and Martin Bros., in writing, that it withdraws its objections to the employment of Garcia and Gallego and requests Martin Bros. to offer Gallego reinstatement.

(c) Post at its business office and at all places where notices to members are customarily posted, in conspicuous places, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent's representative, be posted by it immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Mail to the Regional Director for the Twenty-first Region signed copies of the notice attached hereto as Appendix A for posting at the construction sites of Martin Bros., within the jurisdiction of Respondent, the Employer willing, for sixty (60) consecutive days in places where notices to employees are customarily posted;

(e) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the receipt of this Intermediate Report and Recommended Order what steps it has taken to comply herewith.

It is further recommended that unless Respondent shall within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order notify the aforesaid Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring it to take the aforesaid action.

Dated this 27th day of January 1959.

/s/ MARTIN S. BENNETT,
Trial Examiner.

APPENDIX A

Notice to All Employees of Martin Bros. and to All Members of International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO: Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will make whole Monico C. Garcia and Jesse Gallego for any loss of pay suffered as a result of the discrimination against them.

We Will notify Martin Bros., Monico C. Garcia and Jesse Gallego in writing that we withdraw our

objections to the employment of Garcia and Gallego and request the reinstatement of Gallego to his former or an equivalent position.

We Will Not cause or attempt to cause Martin Bros. or any other employer whose operations affect commerce to discriminate against any employee in violation of Section 8 (a) (3) of the Act.

We Will Not restrain or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO

(Labor Organization)

Dated.....

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America
Before the National Labor Relations Board

Case No. 21-CB-1077

INTERNATIONAL HOD CARRIERS', BUILD-
ING AND COMMON LABORERS' UNION
OF AMERICA, LOCAL #300, AFL-CIO,
(MARTIN BROS.)

and

MONICO C. GARCIA AND JESSE GALLEGO,
INDIVIDUALS.

DECISION AND ORDER

On January 27, 1959, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.¹

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are

¹The Respondent has requested oral argument. This request is hereby denied because the record, the exceptions, and the brief adequately present the issues and the positions of the parties.

hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO, its officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Martin Bros., to discriminate against employees in violation of Section 8 (a) (3) of the Act;

(b) In any other manner restraining or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole Monico C. Garcia and Jesse

Gallego for any loss of pay they may have suffered by reason of the discrimination against them, according to the method prescribed in Section V of the Intermediate Report, entitled "The Remedy;"

(b) Notify Monico C. Garcia, Jesse Gallego, and Martin Bros., in writing, that it withdraws its objections to the employment of Garcia and Gallego and requests Martin Bros. to offer Gallego reinstatement;

(c) Post at its business office and at all places where notices to members are customarily posted, in conspicuous places, copies of the notice attached to the Intermediate Report as Appendix A.² Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent's representative, be posted by it immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

² This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" the words "A Decision and Order." In the event this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

(b) Mail to the Regional Director for the Twenty-first Region signed copies of the aforementioned notice for posting at the construction sites of Martin Bros., within the jurisdiction of Respondent, the Employer willing, for sixty (60) consecutive days in places where notices to employees are customarily posted;

(e) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order, as to what steps Respondent has taken to comply therewith.

Dated, Washington, D. C., May 20, 1959.

BOYD LEEDOM, Chairman,

PHILIP RAY RODGERS,

Member, .

JOSEPH ALTON JENKINS,

Member,

STEPHEN S. BEAN, Member,

JOHN H. FANNING, Member, .

[Seal]

National Labor Relations Board.

United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL HOD CARRIERS', BUILD-
ING AND COMMON LABORERS' UNION
OF AMERICA, LOCAL #300, AFL-CIO,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.92, Rules and Regulations of the National Labor Relations Board—Series 7, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its records as Case No. 21-CB-1077. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Martin S. Bennett on De-

ember 3, 4 and 18, 1958, together with all exhibits introduced in evidence at the hearing.

2. Copy of Trial Examiner Bennett's Intermediate Report and Recommended Order dated January 27, 1959 (annexed to item 4 below).

3. Respondent's exceptions to the Intermediate Report received March 16, 1959, together with request for oral argument. (Oral argument request denied. See Footnote 1, page 1 of Decision and Order.)

4. Copy of Decision and Order issued by the National Labor Relations Board on May 20, 1959, with Intermediate Report and Recommended Order annexed.

5. Respondent's motion for reconsideration, and to set aside the order of the Board and to reopen the case for additional testimony, received August 11, 1959.

6. Copy of Order denying motion issued by the National Labor Relations Board on September 4, 1959.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 8th day of February, 1960.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

[Endorsed]: No. 16732. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. International Hod Carriers', Building and Common Laborers' Union of America, Local 300, AFL-CIO, Respondent. Transcript of Record. Petition for Enforcement and Petition for Review of Order of the National Labor Relations Board.

Filed: February 15, 1960.

/s/ FRANK H. SCHMID,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 16732

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL HOD CARRIERS', BUILD-
ING AND COMMON LABORERS' UNION
OF AMERICA, LOCAL #300, AFL-CIO,
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant
to the National Labor Relations Act, as amended

(61 Stat. 136, 29 U. S. C., Secs. 151, et seq., as amended by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO, its officers, representatives, agents, successors and assigns. The proceeding resulting in said order is known upon the records of the Board as Case No. 21-CB-1077.

In support of this petition the Board respectfully shows:

(1) Respondent is a labor organization engaged in promoting and protecting the interests of its members in the State of California within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on May 20, 1959, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, representatives, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript

of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said order of the Board, and requiring Respondent, its officers, representatives, agents, successors and assigns to comply therewith.

Dated at Washington, D. C., this 30th day of December, 1959.

/s/ THOMAS J. McDERMOTT,
Associate General Counsel, Na-
tional Labor Relations Board.

[Endorsed]: Filed January 5, 1960. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER BY RESPONDENT TO PETITION
FOR ENFORCEMENT OF THE NA-
TIONAL LABOR RELATIONS BOARD
AND REQUESTING REVIEW AND SET-
TING ASIDE OF THE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

International Hod Carriers', Building and Com-
mon Laborers' Union of America, Local #300,
AFL-CIO, Respondent, in answer to the petition
for enforcement of an order of the National Labor
Relations Board filed by the General Counsel for
the Board, with this Honorable Court, alleges as
follows:

1. Admits the allegations of Paragraph 1 of said
petition and admits that this Court has jurisdiction
by virtue of Section 10(e) of the National Labor
Relations Act as amended.

2. In answer to Paragraph 2 of said petition,
Respondent denies that, in essence, due proceedings
had been had before the Board in that as part of
said proceedings a hearing was held before a trial
examiner who made his intermediate report and
recommended order some time in January of 1959,
to which Respondent filed its Exceptions and brief
with the National Labor Relations Board contend-
ing, inter alia, that interstate commerce was not
involved or could be affected in this matter since

the employer was not engaged in interstate commerce within the meaning of the Act; and further contended that the rulings of the trial examiner were in violation of law and in violation of the Act itself; Respondent admits that on or about May 20, 1959, the Board did state its Findings of Fact and Conclusions of Law and issued an order directed to Respondent. Respondent further admits service of said proceedings as alleged in said Paragraph 2 of its petition.

3. Respondent assumes that the Board will proceed and file the transcript as set forth in said Paragraph 3 of said petition.

4. In further answer of said petition, Respondent alleges as follows:—

A. That the Findings of Fact and Conclusions of Law made by the Board are not supported by substantial evidence on the record considered as a whole.

B. That the Order of the Board in this matter affirming the rulings of the trial examiner, finding that Respondent has committed unfair labor practices within the meaning of Section 8 (b)(1)(A) of the Act is not supported by a substantial evidence on record considered as a whole and further is contrary to law.

C. The Board, in issuing said Order, abused its discretionary power by requiring Respondent to comply therewith, in that a substantial and overwhelming evidence on the record considered as a whole establishes the following:—

(1) The National Labor Relations Board has no jurisdiction in this matter in that interstate commerce is not involved or affected;

(2) That the union acting pursuant to a valid, existing and written agreement did not commit any unfair labor practice within the meaning of the Act in requiring registrations to be made by employees on its open and non-discriminatory registration lists;

(3) The Order of the Board in this case, affirming as it does, the intermediate report of the trial examiner requires this entire case to be reviewed by this Court because of the exclusion of testimony by the trial examiner, and his subsequent Findings of Fact and Conclusions of Law which were based on such excluded testimony.

5. Pursuant to the above allegations, and based thereon and based upon the entire record which is being certified and filed with this Honorable Court by the National Labor Relations Board, Respondent herein respectfully requests that the entire record and case be reviewed and upon said review that the Order of the Board of May 20, 1959 be set aside, and as contrary to the substantial evidence on the record considered as a whole, and contrary to law.

Wherefore, Respondent herein respectfully prays that this Honorable Court review this entire case and upon such review and upon the entire transcript, make an Order and Decree setting aside the whole Order of the Board and requiring the Board to find and enter its Order that Respondent has not committed any unfair labor practice in the in-

stant case, and that the instant case should be dismissed with prejudice.

Dated at Los Angeles, California, this 18th day of January, 1960.

ALEXANDER H. SCHULLMAN,
Attorney for Respondent International Hod Carriers', Building and Common Laborers' Union of America, Local #300, AFL-CIO.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 19, 1960. Frank H. Schmid, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON
BY THE BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, petitioner herein, and pursuant to Rule 17 (6) of the rules of this Court, files this statement of points upon which it intends to rely in the above-entitled proceeding, and this designation of parts of the record necessary for the consideration thereof:

I.

Statement of Points

1. Substantial evidence on the record as a whole supports the Board's finding that respondent violated Sections 8 (b) (2) and (1) (A) of the Act when it caused Martin Brothers, an employer, to

discharge employees Monico C. Garcia and Jesse Gallego.

2. The Board properly found that the unfair labor practices affected commerce within the meaning of the Act.

Dated at Washington, D. C., this 8th day of February, 1960.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, Na-
tional Labor Relations Board.

[Endorsed]: Filed February 10, 1960. Frank H. Schmid, Clerk.

Before the National Labor Relations Board
Twenty-First Region

Case No. 21-CB-1077

INTERNATIONAL HOD CARRIERS', BUILD-
ING AND COMMON LABORERS' UNION
OF AMERICA, LOCAL 300, AFL-CIO,

and

MONICO C. GARCIA AND JESSE GALLEGU,
INDIVIDUALS.

TRANSCRIPT OF PROCEEDINGS

849 South Broadway, Los Angeles, California,
December 3, 1958.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock a.m.

Before: Martin S. Bennett, Esq., Trial Examiner.

Appearances: Alexander H. Schullman, Esq., 6505 Wilshire Boulevard, Room 511, Los Angeles, California, appearing on behalf of International Hod Carriers', Building and Common Laborers' Union of America, Local 300, AFL-CIO. Mantalica, Barclay & Teegarden, by Louis N. Mantalica, Esq., 257 South Spring Street, Los Angeles 12, California, appearing on behalf of Contracting Plasterers Association. Ben Grodsky, Esq., 849 South Broadway, Los Angeles, California, appearing on behalf of General Counsel. [1]*

* * * * *

WILLIAM COLHOUN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Grodsky): What is your position, Mr. Colhoun?

A. I am the executive secretary of the Contracting Plasterers Association, 417 South Hill Street.

Q. What type of employers are members of that Association? [13]

* * * * *

The Witness: They are lathing and plastering contractors employed in Orange and Los Angeles Counties exclusively.

* Page numbers appearing at top of page of Reporter's Transcript of Record.

(Testimony of William Colhoun.)

Q. And does the Association engage in collective bargaining on behalf of its members?

A. It does.

Q. Does it have any collective bargaining agreements with laborers, Local No. 300?

A. It does.

Q. Does it have one agreement for one type or class of work or for more than one type or class of work? A. Just for hod carriers.

Q. And let me ask it negatively; does the Association or its members through the Association have any agreement for general laborers?

A. No, they do not.

Trial Examiner: Is this an Association-wide contract?

The Witness: Yes, sir.

Trial Examiner: Only one copy is signed?

The Witness: That's right.

Trial Examiner: And the various employers who belong to the Association are bound by that contract? [14]

The Witness: They are bound by that contract; after the contract is drawn, it is printed and distributed to both the unions and the employers.

Trial Examiner: Is this an annual contract?

The Witness: Yes.

Q. (By Mr. Grodsky): Among the members of your Association, you have Martin Brothers as a member? A. We do.

Q. And is A. E. Eiden and Sons a member?

A. They are. [15]

JACK EIDEN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Grodsky): What is the nature of your business, Mr. Eiden?

A. We are plastering contractors.

Q. You say, "we," will you state with whom you are associated?

A. A. E. Eiden and Sons.

Q. Are you a member of the firm?

A. Yes.

Q. Is it a partnership?

A. No, it is a corporation. [18]

Q. Are you an officer of the corporation?

A. Yes, I am vice-president.

Q. Mr. Eiden, are you a member of the Contracting Plasterers Association of Southern California, Inc.?

A. Well, our corporation is, yes.

Q. Yes, and does your—has your firm engaged in any out-of-state work during the period, say, during the one-year period ending June 30, 1958?

A. We have done work at the Air Force Academy in Colorado Springs.

Trial Examiner: Did you say where your main office was?

The Witness: It is in Los Angeles.

(Testimony of Jack Eiden.)

Q. (By Mr. Grodsky): What was the value of that work during the 12-month period ending June 30, 1958?

A. Well, one of the contracts I brought along is for \$1,58,600.00, and the period you are talking about is from July 1, 1957 to June 30, 1958, and approximately 60 to 70 per cent of the contract was done within that period.

Q. So that somewhere between \$600,000.00 and \$750,000.00 worth of work was in that period?

A. Right.

Trial Examiner: How long have you been a member of the Contracting Plasterers Association?

The Witness: It has been several years, I don't know the exact date. [19]

* * * * *

Trial Examiner: I had meant to ask Mr. Colhoun one question. Perhaps counsel can agree on it as to the approximate number of members in the Association?

Mr. Colhoun: 326.

* * * * *

MONICO C. GARCIO

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Grodsky): Are you a member of a labor organization? A. Yes, sir.

(Testimony of Monico C. Garcio.)

Q. What union? A. Local No. 300. [21]

Q. That is laborers? A. Laborers, yes.

Q. What kind of work do you do?

A. I am a laborer.

Q. General labor work? A. Yes.

Q. You are not a hod carrier? A. No, sir.

Q. You don't do any hod carrying?

A. No, sir.

Q. Did you ever work for Martin Brothers on the Wilshire Terrace job? A. Yes, sir.

* * * * *

Q. (By Mr. Grodsky): When is the first time that you worked on that job?

A. I worked 18 April, 1958, on Friday.

Q. And when is the next time that you came there to go to work?

A. The 21st in April. [22]

Q. That is a Monday? A. Yes, sir.

Q. Did you start to work on that day?

A. No, sir, the business agent come and told me to get a clearance to go to work.

Trial Examiner: Who is the business agent?

The Witness: Dan Gomez.

Mr. Schullman: Who?

Mr. Grodsky: It is Dan Gomez.

Trial Examiner: What did he tell you?

The Witness: He told me to come to a main office and get a clearance to go back to work.

Q. (By Mr. Grodsky): Who was present when Mr. Gomez and you had your conversation?

A. The foreman, Art, and Jesse Gallego.

(Testimony of Monico C. Garcio.)

Q. Is that Art Sherman? A. Yes, sir.

Q. Now, what was the first thing that Mr. Gomez said to you, do you remember?

A. He told me to come down to the main office and get a clearance. [23]

* * * * *

Trial Examiner: Do you know how he happened to tell you to go get a clearance?

The Witness: He told me to go to talk to Joe D'Amico and get a clearance.

Mr. Schullman: That is the gentleman who is absent, Joe D'Amico.

Q. (By Mr. Schullman): Why did he tell you to go get a clearance?

A. Because I don't have any.

Trial Examiner: You didn't have any clearance when he told you to get one?

The Witness: No, sir.

Q. (By Mr. Schullman): All right, did the foreman say anything? [24]

A. He told me to go get the clearance and then get my job back.

Trial Examiner: This is Art Sherman?

The Witness: Yes, sir.

Trial Examiner: How long had you been working there?

The Witness: I was working one day, that was Friday.

Trial Examiner: Friday, the 18th?

The Witness: Yes, sir, then Monday he stopped me.

(Testimony of Monico C. Garcio.)

Trial Examiner: You said you are a member of the union?

The Witness: Yes, sir.

Trial Examiner: How long have you been a member of the union?

The Witness: About a year and 4 months.

Q. (By Mr. Grodsky): Did you go to the Union Hall? A. Yes, sir.

Q. Where is the Union Hall located?

A. On Pico Boulevard.

Q. That is 2005 Pico? A. Yes, sir.

Q. And who did you speak to first?

A. I stopped at the information window and they told me to go to the next floor and talk to Joe D'Amico. Joe D'Amico wasn't in in the morning and I had to wait until 2:00 in the afternoon, and I talked to him and he refused to give me the clearance. [25]

Q. Now, first of all, who was there when you talked to D'Amico? You were there and D'Amico was there; was anybody else there?

A. Jesse Gallego.

Q. Was anybody else there in addition?

A. No, sir.

Trial Examiner: You and Jesse went to the Union Hall together?

The Witness: Yes, sir.

Q. (By Mr. Grodsky): All right, now, can you tell us what you said to Mr. D'Amico and what Mr. D'Amico said to you?

(Testimony of Monico C. Garcio.)

A. Well, I told him I got a job and I need a clearance to go back to work, and he told me I had to put my number on the board and I had to wait until my turn come, so he say he can do nothing at all, so I go down and talk to Ben Harvey and he told me the same thing, they said they sent two men already to work for Martin Brothers.

Trial Examiner: Did you and Jesse go down and talk to Ben?

The Witness: Yes, sir.

Q. (By Mr. Grodsky): That is Dan Harvey; is that correct?

Mr. Colhoun: Yes.

Q. (By Mr. Grodsky): What was the position of Mr. Harvey at that time?

A. He was in the dispatching office. [26]

Trial Examiner: You said you asked for a clearance from Mr. D'Amico?

The Witness: Yes, sir.

Trial Examiner: How about Jesse?

The Witness: Both, we asked both.

Trial Examiner: You both asked?

The Witness: Yes, sir.

Trial Examiner: Did you both ask Dan Harvey?

The Witness: Dan Harvey, yes.

Trial Examiner: What was it Dan Harvey told you?

The Witness: He told me they sent already two men to work.

Trial Examiner: Is that all he said?

(Testimony of Monico C. Garcio.)

The Witness: Yes, and I told him I got the job and he should give me a clearance.

Trial Examiner: You told him you had the job if he would give you a clearance?

The Witness: Yes, sir.

Trial Examiner: What did he say?

The Witness: He say no.

Q. (By Mr. Grodsky): Did you tell D'Amico that you had worked there on Friday before?

A. Yes, sir.

Q. And did you tell him who had told you to come down to the Union Hall? [27]

A. Yes, sir.

Trial Examiner: You got the job on Friday yourself?

The Witness: Yes, sir.

Trial Examiner: How about Jesse, was he with you, too?

The Witness: Yes, he was with me, too.

Trial Examiner: When you got the job you didn't go through the Union Hall?

The Witness: No.

Trial Examiner: You got it yourself?

The Witness: Yes, sir.

Trial Examiner: You were a member of the Union at that time?

The Witness: Yes, sir.

Trial Examiner: You paid your dues?

The Witness: Yes, sir.

Trial Examiner: And your dues were paid up at that time?

(Testimony of Monico C. Garcio.)

The Witness: Yes, sir.

Q. (By Mr. Grodsky): After that time, how long was it before you went to work on the Wilshire Terrace job?

A. After they stopped me?

Q. Yes. A. About seven weeks.

Q. During that period of about seven weeks did you go to the Union Hall looking for work?

A. Yes, sir, I put my name, and they give me a number, and [28] I report every day, 7:00 o'clock in the morning, until 9:30.

Q. What time did you report?

A. 7:00 o'clock in the morning.

Q. Until when? A. Until 9:30.

Q. Do they have a roll call there; do they call the names of the people who are in the Union?

A. Yes, sir, every day.

* * * * *

Q. (By Mr. Grodsky): During the time that you did not work on the Wilshire Terrace job, during that seven weeks, did you at any time during that time go back to the Wilshire Terrace job?

A. About twice.

Q. And did you talk to somebody about a job at that time? [29] A. I talked to Art.

Trial Examiner: The foreman?

The Witness: The foreman; and he told me again I could have the job if I could have the clearance. [30]

* * * * *

(Testimony of Monico C. Garcio.)

Cross-Examination

Q. (By Mr. Schullman): Mr. Garcio, you have been a member of the union for over a year?

A. Yes, sir.

Q. Before the Martin Brothers job, you had other jobs, didn't you? A. Yes, sir.

Q. And some of the other jobs you were sent out by the union? A. Excuse me.

Q. On some of the other jobs, you were sent out by the union? A. No, sir.

Q. You were never sent out by the union?

A. No, sir. [31]

* * * * *

Q. Now, the foreman who was present when the business agent talked to you the day of the, I think it was April 24—

Mr. Grodsky: The 21st.

Q. (By Mr. Schullman): The 21st; he was a foreman for Martin Brothers? A. Yes, sir.

Q. And he was the one who told you to go to the Union and get a clearance, didn't he?

A. No, sir, Ben told me to go and get the clearance.

Q. Who? A. Ben Gomez.

Q. Yes, what did the foreman say?

A. He said to go get it straight with the union and get the clearance and they would give me the job back. [34]

Q. Then the foreman did tell you to go to the union and get the clearance; the foreman also told you to get the clearance. A. Yes, sir.

(Testimony of Monico C. Garcio.)

Trial Examiner: First you spoke to Dan Gomez, then you spoke to the foreman, is that it?

The Witness: Well, they was with us.

Trial Examiner: They were both with you?

The Witness: Yes, sir.

Trial Examiner: Both the foreman and Gomez were talking to you and Jesse?

The Witness: Yes.

Q. (By Mr. Schullman): Was the same thing said to Mr. Gallego? A. Yes, sir.

Trial Examiner: Had you started work that morning?

The Witness: No, sir.

Trial Examiner: You were getting ready to start?

The Witness: Getting ready to start. [35]

* * * * *

Trial Examiner: You said you had never been at the Union Hall before you went to work for Martin Brothers?

The Witness: Yes, sir, I have been in the Hall after the trouble started.

Trial Examiner: Not before?

The Witness: Not before. [37]

* * * * *

Mr. Grodsky: All right, I propose a stipulation that Dan Gomez, who was mentioned here yesterday, is a representative, I don't know the exact title, I think it is Assistant Business Representative of Local No. 300.

Mr. Schullman: So stipulated, subject to excision, if I find it is not true.

Trial Examiner: So stipulated.

WILLIAM L. MARTIN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Grodsky): What is your address, Mr. Martin? A. My business address?

Q. Yes.

A. 6206 South Wilton Place, Los Angeles.

Q. What firm are you connected with?

A. Martin Brothers. [44]

Q. What is the nature of that company, is it a partnership? A. Yes.

Q. Are you one of the partners of the partnership? A. I am one of the partners.

Q. And is the partnership—in what business is the partnership engaged?

A. Lathing and plastering contracting.

Q. And is the partnership a member of the Contracting Plasterers Association of Southern California? A. Yes, sir, we are.

Q. Does your firm have occasion to hire common laborers? By common laborers I mean general laborers or unskilled laborers?

A. Yes, sir, we do.

(Testimony of William L. Martin.)

Q. And have you given any instructions to your foreman regarding any method to be used, specifically in regard to the hire of common laborers?

* * * * *

The Witness: We have no specific instructions.

Q. (By Mr. Grodsky): What method does your firm use with reference to the recruitment of laborers? [45]

* * * * *

The Witness: They on occasion call the Union Hall for men, and sometimes, we hire the men as they come around the job asking for work, or possibly they are referred by someone that is already working on the job.

Q. Does your firm require that the common or unskilled laborers have a clearance from Local No. 300 before they can work for you?

A. No, we don't.

Trial Examiner: You said common or unskilled laborers?

Mr. Grodsky: Yes.

Trial Examiner: Does that mean the same thing as a general laborer?

The Witness: Yes. [46]

* * * * *

Cross Examination

Q. (By Mr. Schullman): Mr. Martin, you have done business [48] with Local No. 300 before this occasion, haven't you? A. Yes, we have.

(Testimony of William L. Martin.)

Q. And you have hired plaster tenders through them? A. Yes.

Q. And you have a contract with them for plaster tenders?

A. We have a contract through our Association, yes.

* * * * *

Q. Now, you also have a contract with the Building Trades, is that right?

A. No, I have not.

Q. You are familiar with the Building Trades master contract?

A. I haven't read it for several years. [49]

Q. You have worked under it?

A. I have at one time, yes.

Q. In fact, you are still working under it, aren't you?

A. I couldn't answer that question because I don't know the termination date of the contract, possibly it is several years old, I haven't recently signed——

Trial Examiner: What is your answer?

The Witness: I haven't recently signed any Building Trades contract. [50]

* * * * *

Q. (By Mr. Schullman): Now, Mr. Martin, with respect to Respondent's Exhibit No. 1 in evidence which I may show you again for a moment, will you read the last paragraph? [51]

* * * * *

(Testimony of William L. Martin.)

Q. (By Mr. Schullman): Isn't that known as a short form agreement? A. That is.

Q. Which takes into it the master agreement between the Building Trades and the various employers, if you know? [52]

* * * * *

The Witness: In 1946, apparently, there was a master agreement between the AGC and the six Basic Trades. That contract, I understand, has been renewed through negotiations from time to time. However, the terms and conditions of the contract of 1946 are not at all what they are today, so therefore, this is a short agreement which we are obliged to sign because we were not members of an AGC Association at that time, and we signed that contract for that particular term of the contract, not for any subsequent contract in later years.

Q. (By Mr. Schullman): As a matter of fact, Mr. Martin, you are not a member of the AGC now? A. That's right.

Q. You said at that time; you have never been a member of AGC?

A. Never been a member. [53]

* * * * *

Q. (By Mr. Schullman): You have been paying health and welfare payments on the laborers up to the present time, haven't you? A. Yes.

Q. And as a matter of fact you have been paying the laborers wages up to the present time, based upon the current laborers wages under the AGC contract? A. Yes. [55]

(Testimony of William L. Martin.)

Redirect Examination

Q. (By Mr. Grodsky): Mr. Martin, at the time when you signed that 1946 agreement which is in evidence, what was the nature of the business of your firm, or whoever it was that—strike that.

Was it Martin Brothers; I didn't see the agreement. It is signed by you, W. L. Martin; was Martin Brothers in business at that time?

A. I am not—I can't recall the exact turn-over time. I think it was about ten years ago that we changed from W. L. Martin Contractor to Martin Brothers. [56]

* * * * *

Q. What was the date of your—what was the nature of your business at that time, was it lathing and plastering work?

A. Well, we started out as a lathing and plastering contractor and during the war we had some government work and it was necessary to take out a Supplemental B-1 license, that is a general contractor's license, which I have at the present time, and the fact that we were hiring carpenters and other people besides lathers and plasterers made it necessary for me then to sign this contract, the short form contract of the six Basic Trades. We still carry the B-1 license, which is supplementary to our regular Lathing and Plastering license and we just keep that in the event that we would want to go into it at some other time.

(Testimony of William L. Martin.)

Trial Examiner: Do you employ any of the six Basic trades?

The Witness: At the present time, we have one operating engineer which we have a contract with; we have one carpenter on the payroll, and I don't think we have any agreement with the carpenters.

Trial Examiner: Is that a temporary thing with the carpenters?

The Witness: It is a temporary thing, yes.

* * * * *

Trial Examiner: Apparently the facts support the stipulation previously entered into with respect to Mr. Gomez, is that correct?

Mr. Schullman: Yes, so stipulated.

Mr. Grodsky: Call Mr. Sherman.

ARTHUR F. SHERMAN [58]

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * *

Q. (By Mr. Grodsky): By whom are you employed?

A. Martin Brothers Lathing and Plasterers Contractors.

Q. Will you please speak up a little?

On what project are you employed at this time?

A. The Wilshire Terrace, 10375 Wilshire Boulevard.

(Testimony of Arthur F. Sherman.)

Trial Examiner: What is your position?

The Witness: Lather foreman.

Q. (By Mr. Grodsky): I think it would be helpful if you tell us the approximate size of that project?

A. Well, what do you mean, in months or weeks or—

Q. How long has the project been in effect so far as the lath and plastering—your work, is concerned?

A. About 9 months, so far.

Trial Examiner: How large a crew do you have?

The Witness: Oh, I had 13 laborers and 60 lathers at one time.

Q. (By Mr. Grodsky): When you say 13 laborers, most of those [59] are plaster tenders?

A. I got one plaster tender, he is a lead man like, and the rest are laborers.

Trial Examiner: Do you do hiring and firing?

The Witness: I hire and fire, yes.

Q. (By Mr. Grodsky): Do you know Mr. Garcio?

A. Very well, yes.

Q. And he is a laborer, he is now working on the project, is that correct?

A. He is working now, yes.

Q. Do you remember when he first went to work on that project?

A. In April.

Q. And did you hire him?

A. I hired him, yes.

Trial Examiner: Are we talking about Monico Garcio?

The Witness: Yes.

(Testimony of Arthur F. Sherman.)

Q. (By Mr. Grodsky): Do you recall what day of the week it was that he went to work?

A. On Friday.

Q. Do you recall whether in addition to him you hired anyone else on that day?

A. I hired one man, but I can't recall his name.

Q. If I suggest his name is Jesse Gallego—

A. That is the name.

Trial Examiner: You hired the two of them together? [60]

The Witness: Yes.

Q. (By Mr. Grodsky): They worked on that day, is that correct? A. Yes.

Q. They next appeared for work on Monday morning, is that right? A. That's right.

Q. And they didn't go to work on that day, did they? A. No.

Q. Will you tell us why they didn't go to work?

A. Well, the assistant business agent of the laborers local came out that morning and he said they had to go down and get a clearance through the local, Local No. 300, to stay on the job; I told the men that, to get a clearance and come back, come on back.

Trial Examiner: You said the assistant business agent came on the job; tell us what he said, did he say this to you?

The Witness: He told me these men have to get off the job because they have no clearance for the job.

Trial Examiner: Then what did you do?

(Testimony of Arthur F. Sherman.)

The Witness: I told them to go down to the local and get a clearance and come back and they had a job from there on.

Q. (By Mr. Grodsky): Did you have any other discussion with Mr.—do you know the name of the assistant business agent [61] who was there?

A. Gomez.

Q. Did you have any other discussion with him at that time about those men?

A. No, I told him they were very good men, I would like to have them back. That is what I told him.

Mr. Grodsky: Nothing further.

Cross Examination

Q. (By Mr. Schullman): Mr. Sherman, I presume that as foreman for the Martin Brothers for some years you have had contact with representatives of Local No. 300, is that correct, you knew them? A. Very well, yes.

Q. And from time to time they were with the business agent concerning plaster tenders?

A. Yes.

Q. And from time to time concerning laborers, is that right? A. Yes.

Q. You knew that they had a hiring hall and a registration system down there?

A. I did, yes. [62]

* * * * *

JOSEPH D'AMICO

a witness called by and on behalf of the Hod Carriers, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Schullman): Mr. D'Amico, you are the business representative of Local 300?

A. Yes.

Q. What is your exact title presently?

A. Acting field manager. [67]

* * * * *

Q. Now, with respect to the—by the way, Local 300 has how many members?

A. 15,000 or better.

Q. You have divided into two categories, laborers—

A. And plaster tenders.

Q. Does the same Local 300 have membership of both?

A. Both, yes. [68]

* * * * *

Q. Will you tell us very briefly the practice of short form practice, and how the subject trades operated thereunder?

A. The short form agreement is operated, the laborers representative, business representative, or carpenters business representative, or any of the craft, can sign a contract under this short form.

Anybody that signs the short form, he is covered with the laborers with all crafts of it. That is what they call a short form. In other words, the man doesn't belong to association, or which we have in

(Testimony of Joseph D'Amico.)

Los Angeles, we have four different associations here. We have AGC, BCA, HBA, and EGCA.

Q. Now, for the record, will you spell out what those are, the four associations?

A. That is the AGC is—

Q. Is that Associated General Contractors?

A. That is right; and BC is Building Contractors Association. HBA is Home Builders Association; and EG, Engineers, EGCA, engineers, General Contractors.

Q. Now, Mr. D'Amico, the AGC, if you know, now has I think six basic trades?

A. That is right.

Q. And has, if you know, how many subtrades?

A. I really couldn't tell you that.

Q. Are the laborers one of the subtrades? [73]

A. Yes. We are one of them; we are the main ones, not one of them.

Mr. Grodsky: Not a subtrade?

The Witness: We are the basic trades; we are the basic trades.

Q. (By Mr. Schullman): Where the employer is not a member of the association, he signs a short form agreement? A. That is correct.

Q. With the AGC?

A. No. With the building trades, that is right, short form.

Q. And then that short form merely relates to the general master contract of building trades?

A. That is right. [74]

* * * * *

(Testimony of Joseph D'Amico.)

Q. (By Mr. Schullman): Now, under the short form agreement signed with Martin, Mr. Martin, and the AGC, the laborers and the other six trades operated thereunder; is that correct?

A. That is right.

Q. Now, when operating thereunder, what terms, or what conditions would you use, which contract would you operate under?

A. Under the master agreement of the AGC. That is the only way we can operate. [79]

* * * * *

Q. All right. Now, let me break down physically, you have how many members in Local 300?

A. Right now we have at least 15,000.

Q. And to break that down, how many would you say are plaster tenders and how many laborers, roughly?

A. Roughly, around 1500 plaster tenders, we have.

Q. The greater majority are laborers?

A. Oh, yes, laborers and mason tenders, and so forth.

Q. Now, your main office is located where?

A. 2005 West Pico, Los Angeles.

Q. And you have, that is your central office?

A. That is our main office, central office.

Q. Where is your main dispatching room?

A. Downstairs in the hall, big hall we have. [116]

* * * * *

(Testimony of Joseph D'Amico.)

Q. Now, as a practical matter, when that short form is used, and calling attention to this short form, who gets it signed, if you recall, the AGC or the Laborers Local? [119] A. The short form?

Q. Yes.

A. The short form anybody can sign the short form, and then all the trades come under it. A carpenter can sign it, and the laborers can sign it, and carpenters come under it.

Q. Who gets it signed?

A. Any business agent.

Q. Of your local or any local?

A. Any local. [120]

* * * * *

Q. (By Mr. Schullman): Now, with respect to the union, itself, if the short form is signed, and calling attention to R-1, what is done, if anything, with respect to requiring the employees in this case of Martin to become a member of, to become members of Local 300?

A. Well, he has to, when he becomes, when he signs the short form, if he, if he has non-union laborers on the job, if he has non-union members on the job, we sign them up and give them a clearance, because it has been the practice of our area, and from then on, he calls the hall for his men, and we give the first men off the board. [121]

* * * * *

RESPONDENT'S EXHIBIT No. 1

No. 43627

Los Angeles, California

July 18, 1946

ARTICLES OF AGREEMENT

Entered Into By And Between W. L. Martin, hereinafter known as the Contractor, and the Building and Construction Trades Councils of The Twelve (12) Southern California Counties, hereinafter known as the Council. For the purpose of clarification, the twelve (12) Southern California Counties are herein enumerated as follows: Los Angeles, Inyo, Mono, Orange, Riverside, San Bernardino, Imperial, Ventura, Santa Barbara, San Luis Obispo, Kern and San Diego.

The Contractor does hereby agree and affirm that he will employ or cause to be employed upon any and all work which comes under the jurisdiction of the Councils named in Paragraph 1 above on all work performed by said Contractor or his subcontractor in the jurisdiction of said Councils and their affiliated Unions, only members in good standing in the organization to which said work properly belongs in accordance with the wage scales, classifications and working rules of the Union having jurisdiction.

The Contractor further agrees that before starting said work in the jurisdiction of any of the Councils enumerated in Paragraph 1 of this Agreement, he will contact the Council in the jurisdiction where

Respondent's Exhibit No. 1—(Continued)

the work is to be performed and will comply with the requirements of the Council and its affiliated Unions for clearing workmen to the job before said workmen are put to work thereon.

The Council in the locality where the work is to be performed, agrees to furnish to the Contractor competent mechanics in all branches of the industry, upon any and all work done under the direct supervision of the Contractor. Upon all work done on a subcontract basis, the Council agrees to furnish successful subcontractors competent men in all branches of the building industry. Should an occasion arise wherein the Council is unable to fulfill its part of this Agreement, then the Contractor, or his Agent for him, shall be allowed to employ whomsoever he may choose, provided, however, such workman or workmen so employed shall signify their willingness to abide by the rules and regulations of the Union to which said workman or workmen properly belong, by filling out an application, paying the necessary fee and depositing same with the proper Union. Upon all work either direct or contracted, there shall be no stoppage of work on account of a jurisdictional dispute. If any jurisdictional dispute arises it must be settled through the Council and the Building Trades Department of the American Federation of Labor, and both parties signatory hereto shall immediately comply with the decisions rendered.

It is mutually agreed by the Contractor, Councils, and their affiliated Unions that they recognize the

Respondent's Exhibit No. 1—(Continued)
need for apprenticeship training and to this end shall indenture apprentices in each of the trades employed, in conformity with Section 1777.5 of the Labor Code of the State of California governing employment of apprentices on public work.

This agreement shall become effective at the date hereof and remain in full force and effect for a period of one year and from year to year thereafter, unless either party has given sixty (60) days written notice to the other party, prior to the termination date, that it desires to terminate, amend or modify said Agreement.

LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL

/s/ L. A. MASHBURN,

L. A. Mashburn, Secretary

/s/ By L. A. VIE,

Business Representative

536 Maple Ave., Room 202

Los Angeles 13, Calif.

MIchigan 0678

/s/ W. L. MARTIN

Contractor

6206 So. Wilton Pl., L. A. 44,

PL 14455

Classification C-35 S-B1

License No. 67612

Admitted in Evidence December 3, 1958.